2016 IL App (2d) 150802-U
No. 2-15-0802
Order filed April 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WELLS FARGO BANK, N.A.,	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CH-5096
	)	
TAMANNA KALRA CHOPRA, a/k/a Tamanna K. Chopra,	)	
	)	
Defendant-Appellant	)	
	)	
(Tarun Chopra, Chesapeake Trails Homeowners Association, RBS Citizens, N.A., successor to Charter One Bank, N.A., Unknown Owners and Nonrecord Claimants, Defendants.)	)	Honorable Mitchell L. Hoffman, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly confirmed the judicial sale of the property because: (1) Chopra did not prove by a preponderance of the evidence that she applied for assistance under the Making Home Affordable Program; (2) her argument premised on the federal regulation was forfeited; and (3) even otherwise, the federal regulation did not apply retroactively. Therefore, we affirmed.

¶ 2 This case involves a residential mortgage foreclosure action and judicial sale instituted by plaintiff, Wells Fargo Bank, N.A. (Wells Fargo), against defendant, Tamanna Kalra Chopra, a/k/a Tamanna K. Chopra. The court entered a judgment for foreclosure and sale of the property on July 9, 2014, and it confirmed the sale on March 6, 2015. Chopra appeals the trial court's order confirming the judicial sale. In particular, Chopra argues that she applied for assistance under the Making Home Affordable Program (MHAP) or under the Home Affordable Modification Program (HAMP), which is a component of the MHAP. See *Citimortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 64. As a result, she argues that the trial court erred by not setting aside the judicial sale pursuant to section 15-1508(d-5) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(d-5) (West 2010)). In addition, Chopra filed a motion to reconsider. For the first time, Chopra cited Regulation X of the Real Estate Settlement Procedures Act (RESPA), for the argument that her application for assistance under HAMP was facially complete. See 12 C.F.R. § 1024.41(c)(2)(iv) (2014). The trial court denied Chopra's motion to reconsider, and she appeals that order as well. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2005, Chopra executed a mortgage for $229,000 on property located at 2335 Seneca Trail, Round Lake (the property). The lender was ABS Home Mortgage, Inc., and the note had a blank endorsement to Wells Fargo. On September 10, 2010, Wells Fargo filed a complaint to foreclose the mortgage based on Chopra's failure to make payments since May 2010. Chopra filed an answer in November 2010 and raised two affirmative defenses: first, that Wells Fargo lacked standing, and second, that the property identification numbers in the complaint and mortgage differed. Wells Fargo filed a response to the affirmative defenses.

¶ 5 In June 2012, Wells Fargo moved for summary judgment, and Chopra filed a response in September 2012. The trial court denied Wells Fargo's motion for summary judgment in October 2012, and gave it leave to amend its complaint to foreclose the mortgage. Wells Fargo filed an amended complaint on October 22, 2012, which Chopra answered in November 2012. Chopra again asserted an affirmative defense of lack of standing, and Wells Fargo moved to strike that defense in January 2013. The court struck the defense without prejudice, and Chopra never filed another affirmative defense.

¶ 6 Wells Fargo filed a second motion for summary judgment in June 2013. Later, in December 2013, a vice president of loan documentation at Wells Fargo, Myrella Martinez, filed a loss mitigation affidavit. In her affidavit, Martinez averred that Chopra's loan was eligible for two loss mitigation programs: 1) the HAMP program and 2) the "Proprietary Loss Mitigation Options" program. Martinez further averred that although Wells Fargo had sent "Solicitation Letters" and "Additional Information Required Letters" to Chopra regarding these programs, Wells Fargo had been unable to establish contact with Chopra due to a "cease and desist order" by Chopra's attorney on the loan. In March 2014, Chopra moved to strike Wells Fargo's second motion for summary judgment. The following month, the court denied Wells Fargo's motion for summary judgment without prejudice.

¶ 7 Also in April 2014, Wells Fargo filed a second loss mitigation affidavit. The affiant, Gloria Ortega, was another vice president of loan documentation at Wells Fargo. Like Martinez's affidavit, Ortega's affidavit stated that Chopra was eligible for two loss mitigation programs and that "Solicitation Letters" and "Additional Information Required Letters" had been sent to her. However, Wells Fargo had not received all the information it needed to perform a loss mitigation analysis.

¶ 8 In May 2014, Wells Fargo filed a third motion for summary judgment, which included an affidavit of amounts owed. In addition, Wells Fargo filed a motion for entry of a judgment for foreclosure and sale. Chopra responded with a motion to strike the affidavit of amounts owed based on a procedural defect, which the court denied. On July 9, 2014, the court granted summary judgment in favor of Wells Fargo and a judgment for foreclosure and sale. A sheriff's sale occurred on October 16, 2014, and on October 28, 2014, Wells Fargo moved for an order approving the sale.

¶ 9 On December 17, 2014, Chopra filed a response to Wells Fargo's motion for order approving the sale. In her response, Chopra stated the following. In December 2010, Chopra had submitted a loan modification package to Wells Fargo. Wells Fargo removed the package from review because it was lacking certain documentation, although Wells Fargo never indicated what documentation was lacking. Chopra, after retaining counsel, submitted a second loan modification package to Wells Fargo in April 2011. Wells Fargo acknowledged receipt of the package but took no action on it. After that, Chopra submitted a third loan modification package on October 14, 2014, and Wells Fargo acknowledged receiving it. Despite the pending loan modification package, the property was sold at a sheriff's sale. When Chopra's counsel questioned Wells Fargo regarding the sale, Wells Fargo sent a letter to Chopra, dated December 3, 2014, which stated as follows.

¶ 10 Chopra's loan was initiated for review for workout options on December 27, 2010. After reviewing the financial information received, additional information was needed to complete the review. Chopra's loan was reviewed for retention options on three occasions between April and December 2010, but the loan was removed from all three reviews due to no response from Chopra and not receiving the requested information. Foreclosure proceedings were initiated on

August 31, 2010. Because Wells Fargo never received the requested information, the loan was removed from review on January 12, 2011. Wells Fargo sent Chopra a letter informing her of its decision. Although Wells Fargo received a "partial" financial package for review on April 14, 2011, the loan was involved in contested foreclosure litigation from January 2011 to July 2014, and "review options and/or requirements would have been handled by the courts." On October 14, 2014, Wells Fargo reviewed additional financial information received from Chopra to determine if a review of workout options could be initiated. After reviewing the financial information received, it was determined that the financial information was incomplete. In sum, Wells Fargo "did not receive all of the required documents necessary for the review of possible workout options." Because a complete loan modification package was not received, Wells Fargo denied Chopra's request to rescind the foreclosure sale.

¶ 11 Chopra argued that the December 3, 2014, letter from Wells Fargo failed to identify what documents were missing from her loan modification packages. In addition, Chopra argued that Wells Fargo had not made a single decision on any of the multiple loan modification packages she had submitted. As a result, Chopra argued that Wells Fargo violated section 15-1508(d-5) of the Foreclosure Law, which provides that a sale shall be set aside if the mortgagor "proves by a preponderance of the evidence that (i) the mortgagor has applied for assistance under the [MHAP] ***." See 735 ILCS 15-1508(d-5) (West 2010).

¶ 12 In January 2015, Wells Fargo filed a reply in support of its motion for approving the sale. In its reply, Wells Fargo argued that section 15-1508(d-5) of the Foreclosure Law placed the burden of proof on Chopra to show that she applied for assistance under HAMP. However, Chopra offered no evidence of what the application for loan assistance consisted of, what documents were prepared, or how the information was sent to Wells Fargo. Wells Fargo pointed

out that Chopra attached only its December 3, 2010, letter acknowledging receipt of incomplete financial information on October 14, 2014, two days prior to the sale.

¶ 13 Chopra filed a sur-response and this time, she attached several exhibits. Exhibit A was a letter, dated January 12, 2011, from Wells Fargo to Chopra regarding her first 2010 loan modification package. The letter stated that Wells Fargo denied Chopra's request because she had not provided the information that Wells Fargo had requested. Exhibit B was an email, dated April 12, 2011, in which Chopra's counsel submitted her second loan modification package to Wells Fargo, and Wells Fargo acknowledged receipt of it. The remainder of exhibit B consisted of the documents submitted with that loan modification package, which included part of a financial information worksheet, a single pay stub, and five pages of bank statements. Exhibit C was another email, dated October 14, 2014, in which counsel for Chopra submitted a third "updated" loan modification package to Wells Fargo. In that email, counsel for Chopra stated that Wells Fargo had not responded to Chopra's second loan modification package from 2011. Counsel also requested that the sheriff's sale, which was scheduled to occur in two days (October 16, 2014), be postponed in order to review the third loan modification package. The remainder of exhibit C consisted of numerous documents submitted as part of that third loan modification package.

¶ 14 The next three exhibits attached to Chopra's sur-response were letters from Wells Fargo to Chopra. In exhibit D, dated October 16, 2014, Wells Fargo stated that it was currently reviewing Chopra's inquiry and expected to complete its research and provide the results on or before October 28, 2014. In exhibit E, dated October 28, 2014, Wells Fargo stated that the resolution of Chopra's inquiry was taking longer than originally stated, and it anticipated a final resolution by November 12, 2014. In exhibit F, dated November 28, 2014, Wells Fargo again

stated that the resolution was taking longer than originally stated, and it anticipated a final resolution by December 12, 2014.

¶ 15 Exhibit G was Chopra's affidavit. In her affidavit, Chopra averred that she never received any correspondence from Wells Fargo regarding either her first December 2010 loan modification package or her second April 2011 loan modification package. In addition, Wells Fargo never advised Chopra that her third October 14, 2014, loan modification package had been denied.

¶ 16 Wells Fargo filed a sur-reply. First, Wells Fargo argued that Chopra forfeited her right to raise issues regarding her 2010 and 2011 loan modification packages. In particular, Wells Fargo argued that it tendered loss mitigation affidavits, and then the court entered judgment of foreclosure and sale on July 9, 2014. However, Chopra never raised issues pertaining to loss mitigation, and the court's July 9, 2014, order necessarily implied a finding that it had sufficiently documented its compliance with applicable loss mitigation programs. Second, Wells Fargo argued that in the event the court did consider Chopra's arguments regarding her first two loan modification programs, it had attached exhibits showing that it had reached out to Chopra on several occasions. Finally, Wells Fargo argued that it was not required to review the third loan modification program, given its untimely submission.

¶ 17 Wells Fargo attached four exhibits to illustrate this point. Exhibit A was a letter, dated July 21, 2010, that it sent to Chopra stating that "additional documentation" was "required" before it could determine Chopra's eligibility for loan modification. The letter identified the documents that were needed by August 5, 2010, under HAMP. Exhibit B was a cease and desist letter from Chopra's attorney, dated October 20, 2010, to Wells Fargo, advising Wells Fargo to cease and desist all attempts to collect the mortgage debt. Exhibit C was a letter, dated August 6,

2012, from Wells Fargo to Chopra. In the letter, Wells Fargo requested Chopra to complete the enclosed authorization so that the cease and desist could be removed, and Wells Fargo could resume contact with Chopra about mortgage assistance options. Exhibit D was a letter, dated October 9, 2014, reminding Chopra of the sheriff's sale scheduled for October 16, 2014. In addition, the letter noted that Wells Fargo had not heard from Chopra or received the necessary documentation required to determine her eligibility for mortgage assistance and that "at this point, there [was] not enough time to review [her] loan for mortgage assistance options and make a decision prior to the scheduled foreclosure sale date."

¶ 18 On March 6, 2015, the trial court found that Chopra had "failed to sustain" her "burden" under section 15-1508(d). As a result, it granted Wells Fargo's motion to approve the sale.

¶ 19 Chopra filed a motion to reconsider the order approving the sale, which focused only on her 2011 loan modification package. Attached to her motion was the affidavit of her attorney, Vernon Morgan, who averred that he had represented her at the hearing on Wells Fargo's motion to approve the sale. Morgan stated in his affidavit that during that hearing, he had informed the court that he had submitted the 2011 loan modification package on Chopra's behalf and that it was "a complete loan modification application package according to industry standards generally understood and accepted in April 2011." Chopra again argued that Wells Fargo failed to ever respond to her 2011 loan modification package. However, in addition to this argument, she argued for the first time that Wells Fargo violated various HAMP and Fannie Mae guidelines by failing to notify her of missing documents from her application. In support of her argument, she attached several Freddie Mac Bulletins and HAMP Supplemental Directives. She also argued for the first time that pursuant to a RESPA provision in the Code of Federal Regulations, entitled loss mitigation procedures, her application was facially complete. See 12 C.F.R. §

1024.41(c)(2)(iv) (2014) (stating that if a borrower submits all the missing documents and information as stated in the notice required, or no additional information is requested in such notice, the application shall be considered facially complete).

¶ 20 A hearing on Chopra's motion to reconsider occurred on June 24, 2015. At the hearing, Chopra argued that the HAMP guidelines required Wells Fargo to acknowledge receipt of a loan modification package and send an incomplete information notice to Chopra. However, Wells Fargo failed to comply with these guidelines after receiving Chopra's 2011 loan modification package. In response, Wells Fargo argued that the 2011 loan modification package was incomplete, which the trial court had determined at the prior hearing in which it granted Wells Fargo's motion to approve the sale. Wells Fargo argued that, as a result, Chopra could not rely on her application for assistance under HAMP to set aside the sale pursuant to section 15-1508(d-5).

¶ 21 At this point, the court noted that even assuming the 2011 loan modification package was incomplete, Chopra's argument in her motion to reconsider was that the HAMP guidelines required Wells Fargo to acknowledge receipt of the loan modification package and send a separate notice stating what documents were missing. Wells Fargo responded that despite extensive briefing throughout the case, Chopra had never relied on the HAMP guidelines for her argument, meaning the argument was forfeited.

¶ 22 Wells Fargo argued that instead of focusing on the HAMP guidelines, the issue in the motion to reconsider was whether Chopra failed to meet her burden under section 15-1508(d) of the Foreclosure Law. See 735 ILCS 15-1508(d-5) (West 2010) ("The court that entered the judgment shall set aside a sale *** upon motion of the mortgagor at any time prior to the confirmation of the sale, if the mortgagor proves by a preponderance of the evidence that (i) the

mortgagor has applied for assistance under the [MHAP] *** and (ii) the mortgaged real estate was sold in material violation of the program's requirements for proceeding to a judicial sale."). Wells Fargo argued that although Chopra was focusing on various HAMP guidelines that were allegedly violated, that argument pertained to the second prong of 15-1508(d-5), which should not be reached until the first prong was satisfied. See *Bermudez*, 2014 IL App (1st) 122824, ¶ 60 (the threshold issue is whether the defendants applied for assistance under HAMP, because without having first applied for assistance under HAMP, their property could not be sold in material violation of HAMP). Wells Fargo argued that because Chopra failed to submit all of the required documentation, she did not "apply for assistance" under the first prong, meaning that it was improper to reach the second prong. See *id*. ¶ 67 (to "apply for assistance" under HAMP under section 15-1508(d-5), the borrower must submit the documentation required by the servicer to determine the borrower's eligibility and verify his or her income, and the defendants failed to prove by a preponderance of the evidence that they submitted all of the required documentation).

¶ 23 Finally, Wells Fargo argued that section 1024.41(c)(2)(iv) of the Code of Federal Regulations (12 C.F.R. § 1024.4(c)(2)(iv) (2014), which did not become effective until January 10, 2014, did not apply retroactively to her 2011 loan modification package. Wells Fargo also argued that just as Chopra's arguments based on the HAMP guidelines were forfeited, this argument was forfeited as well.

¶ 24 The court ultimately denied Chopra's motion to reconsider on July 15, 2015. According to the court, Chopra failed to meet her initial burden of showing that she submitted a "full and complete" application for assistance under HAMP. In addition, the court determined that section 1024.41(c)(2)(iv) was not applicable because it did not apply retroactively.

¶ 25 Chopra timely appealed the March 6, 2015, order confirming the sale, and the July 15, 2015, order denying her motion to reconsider.

¶ 26 II. ANALYSIS

¶ 27 A. Confirmation of Sale

¶ 28 Chopra's argument on appeal is that the trial court abused its discretion when it confirmed the judicial sale of the property. The standard of review of a court's approval of a judicial sale is an abuse of discretion. *Bermudez,* 2014 IL App (1st) 122824, ¶ 57. The trial court abuses its discretion when its ruling rests on an error of law or where no reasonable person would take the view adopted by it. *Id*.

¶ 29 A judicial foreclosure sale is not complete until it has been approved by the trial court. *Id*. The objecting party bears the burden of showing why the sale should not be confirmed. *NAB Bank v. LaSalle Bank,* 2013 IL App (1st) 121147, ¶ 9. Chopra moved to set aside the sale of the property under section 15-1508(d-5) of the Foreclosure Law, which governs the trial court's analysis of whether or not a judicial sale should be approved in accordance with the directives of the MHAP and HAMP. Section 15-1508(d-5) provides, in relevant part:

> "The court that entered the judgment shall set aside a sale held pursuant to Section 15-1507, upon motion of the mortgagor at any time prior to the confirmation of the sale, *if the mortgagor proves by a preponderance of the evidence that (i) the mortgagor has applied for assistance under the [MHAP]* established by the United States Department of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008 *** and (ii) the mortgaged real estate was sold in material violation of the program's requirements for proceeding to a judicial sale." (Emphasis added.) 735 ILCS 5/15-1508(d-5) (West 2010).

Accordingly, under section 15-1508(d-5), a defendant must prove by a preponderance of the evidence that he or she applied for assistance under HAMP and that the property was sold in material violation of HAMP's requirements for proceeding to judicial sale. *Bermudez*, 2014 IL App (1st) 122824, ¶ 59.

¶ 30 Focusing exclusively on her 2011 loan modification package, Chopra argues that she "applied for assistance" under HAMP within the meaning of section 15-1508(d-5). Though she acknowledges that her 2011 loan modification package was not "complete," she nevertheless argues that section 15-1508(d-5) does not use the word "complete" and contains no such requirement. As this is a matter of statutory construction, we set forth the relevant principles.

¶ 31 Although the trial court has discretion to decide whether to confirm the sale, we review the construction of statutes *de novo*. *CitiMortgage, Inc., v. Johnson*, 2013 IL App (2d) 120719, ¶ 36. "The goal of statutory construction is to ascertain and give effect to the legislature's intent." *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶ 23. The best indicator of this intent is the language of the statute itself, which must be given its plain and ordinary meaning. *Id*. When construing a statute, we presume that the legislature did not intend absurdity, inconvenience, or injustice. *Id*.

¶ 32 As Wells Fargo points out, the first district decided this very issue in *Bermudez*, and we agree that *Bermudez* is dispositive here. The defendants/borrowers in *Bermudez* made the identical argument that Chopra makes, in that they conceded that they did not submit a complete application under section 15-1508(d-5). *Bermudez*, 2014 IL App (1st) 122824, ¶ 62. Even so, the defendants argued that they satisfied section 15-1508(d-5) "because the intent of the law" did not "support an interpretation requiring borrowers to have submitted a complete application in order to have " 'applied for assistance.' " *Id*. According to the defendants, they met their burden

by demonstrating that it was more likely than not that they applied for assistance given the documents and the steps they took. *Id*.

¶ 33 Looking to the plain meaning of the words "applied" and "assistance," the *Bermudez* court determined that " 'applied for assistance under MHAP' [meant] to formally apply, usually in writing, for help pursuant to the procedures set forth by HAMP, a component of MHAP." *Id*. ¶¶ 63-64. Recognizing that the legislature specifically referenced MHAP, the court noted that the HAMP guidelines and bulletins did not set forth procedures to "apply" for assistance. *Id*. ¶ 66. Still, given that the first step in the loan modification process was that borrowers had to be "eligible" and have their income "verified," the court concluded that in order to apply for assistance pursuant to section 15-1508(d-5), the borrower had to submit the documentation required by the servicer to determine the borrower's eligibility and verify his or her income. *Id*. The court then listed the documentation the borrower needed to submit to determine eligibility and income, as provided by the HAMP guidelines and bulletins. *Id*. Because the defendants in *Bermudez* failed to submit the required documentation to the servicer, the court concluded that they did not prove by a preponderance of the evidence that they applied for assistance under HAMP. *Id*. ¶¶ 67, 69.

¶ *34* *Bermudez* may be contrasted with *CitiMortgage, Inc. v. Lewis*, 2014 IL App (1st) 131272, where the court determined that the defendant (borrower) had applied for HAMP assistance under section 15-1508(d-5). *Id*. ¶ 48. In reaching this conclusion, the court in *Lewis* relied on the fact that the plaintiff (servicer) had determined that the defendant was ineligible for assistance based on her insufficient income. *Id*. In other words, the denial of the defendant's application on the merits demonstrated that the plaintiff had all the required documentation it needed in order to make its assessment. *Id*.

¶ 35 In the case at bar, there was no denial of Chopra's application on the merits, as in *Lewis*. Based on the documents Chopra submitted in her 2011 loan modification package, Wells Fargo never made a determination as to her eligibility or income. Therefore, the facts in this case are the same as in *Bermudez*, where it was undisputed that the defendants failed to submit a complete HAMP application and thus failed to satisfy their burden under section 15-1508(d-5). We agree with the *Bermudez* court as to its interpretation of "applied for assistance" under section 15-1508(d-5). Because it is undisputed that Chopra failed to submit all of the documents required to apply for HAMP assistance, she failed to show by a preponderance of the evidence that she applied for assistance under section 15-1508(d-5).

¶ 36 Chopra attempts to distinguish *Bermudez* on the basis that there, the plaintiff/servicer repeatedly requested documents from the borrowers, which the borrowers continually failed to provide. To this end, Chopra argues that the Fannie Mae and HAMP guidelines not only recognize that a borrower's application may be incomplete, they require the servicer to send the borrower an incomplete information notice that lists the additional required documentation.

¶ 37 Wells Fargo makes several arguments as to why Chopra's argument fails. First, it argues that Chopra's arguments regarding the HAMP guidelines are forfeited, in that she failed to raise them in opposition to the judgment for foreclosure or as an affirmative defense but instead waited, without explanation, to raise them in her motion to reconsider. See *In re Marriage of Ostrander*, 2015 IL App (3d) 130755, ¶ 17 (a trial court should only address an issue raised for the first time in a motion to reconsider when there is a reasonable explanation of why it was not raised at the time of the original hearing); see also *Perkey v. Portes-Jarol*, 2013 IL App (2d) 120470, ¶ (trial courts should not allow litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling). Second, Wells

Fargo argues that these arguments are forfeited based on Chopra's failure to present a complete record on appeal. As Wells Fargo points out, the transcript of the hearing on its motion to confirm the judicial sale is not part of the record. Given that this was the hearing in which the trial court considered evidence as to whether Chopra met her burden of showing whether she applied for HAMP assistance under section 15-1508(d-5), Wells Fargo points out that we must presume the order was in conformity with the law. See *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009) (appellant has the burden to present a sufficiently complete record of the trial proceedings to support a claim of error); *Lambert v. Downers Grove Fire Department Pension Board*, 2013 IL App (2d) 110824, ¶ 35 (any doubts that might arise from the incompleteness of the record will be resolved against the appellant). Third, Wells Fargo disputes Chopra's claim that it never responded to her 2011 loan modification on the merits. To this end, Wells Fargo points to loss mitigation affidavits that refer to the need for more information from Chopra, and its inability to contact Chopra due to the cease and desist letter.

¶ 38 Though these arguments likely have merit, the most persuasive argument advanced by Wells Fargo is that section 15-1508(d-5) places the burden on Chopra, the borrower, to show that she applied for assistance. As stated above, the plain language of the statute requires Chopra to show, by a preponderance of the evidence, that she applied for assistance under HAMP, which she failed to do. For this reason, we agree with Wells Fargo that Chopra's focus on its compliance or lack of compliance with the HAMP guidelines improperly shifts the burden of proof. *Cf. Wayne County Press, Inc. v. Isle*, 263 Ill. App. 3d 511, 513 (1994) (despite the clear language of the statute, the trial court misunderstood the burden of proof by improperly shifting it). It is up to the legislature to determine what is required to set aside a judicial sale, and it has seen fit to place the burden on the borrower at this stage. See *Household Bank, FSB v. Lewis*,

229 Ill. 2d 173, 181-82 (2008) (balancing the competing policy considerations of the purchasers at a judicial sale and the mortgagor is ultimately a matter for the legislature).

¶ 39 Chopra's final argument is that section 1024.41(c)(2)(iv) requires this court to consider her HAMP application "complete." See 12 C.F.R. § 1024.41(c)(2)(iv) (2014) (stating that if no additional information is requested by the servicer, the application shall be considered facially complete).

¶ 40 At the outset, we agree with Wells Fargo that Chopra's failure to raise the issue until her motion to reconsider results in forfeiture. See *In re Marriage of Ostrander*, 2015 IL App (3d) 130755, ¶ 17 (a trial court should only address an issue raised for the first time in a motion to reconsider when there is a reasonable explanation of why it was not raised at the time of the original hearing). Moreover, though the trial court denied defendant's motion on the merits, we may affirm on any basis in the record. See *Seitz-Partridge v. Loyola University of Chicago*, 2013 IL App (1st) 113409, ¶ 17 (we may affirm the trial court's decision for any reason in the record, regardless of its basis for the decision).

¶ 41 Even otherwise, we agree with the trial court's determination that section 1024.41(c)(2)(iv) was inapplicable because it did not apply retroactively. Although Chopra concedes that her 2011 loan modification package predated the federal regulation, which became effective January 10, 2014, she argues that she is not asking for retroactive application but rather prospective application. In other words, Chopra argues that Wells Fargo was obligated to apply section 1024.41(c)(2)(iv) the date it became effective, January 10, 2014, to her still pending 2011 loan modification package.

¶ 42 Chopra's argument is unpersuasive. "Federal regulations do not, indeed cannot, apply retroactively unless Congress has authorized that step explicitly." *Jahn v. 1-800-Flowers.com*,

Inc., 284 F.3d 807, 810 (7th Cir. 2002). With regard to this federal regulation, the Consumer Financial Protection Bureau (CFPB) specified that it "would apply to transactions for which applications were received on or after January 10, 2014." Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 60382-01 (October 1, 2013); see also *Lage v. Ocwen Loan Servicing LLC*, ___ F. Supp 3d *9 (S.D. Fla. Nov. 19, 2015) (noting that in "amendments to Regulation X in October 2013, the CFPB once again reiterated that 'the new regulations would apply to transactions for which applications were received on or after January 10, 2014.' "). Therefore, it is evident that an application received by a servicer prior to that effective date does not activate the requirements under that regulation. *Lage*, F. Supp 3d *9 (S.D. Fla. Nov. 19, 2015). Because Chopra's loan modification package was submitted in 2011, she cannot avail herself of a regulation that did not apply until January 10, 2014. See *Campbell v. Nationstar Mortgage*, 611 Fed. Appx. 288, 297 (6th Cir. 2015) (if the CFPB had intended to apply the regulation "to conduct occurring before January 10, 2014, it could have ignored the industry concerns about the time allotted for implementation and made the rule effective immediately.").

¶ 43 Because the federal regulation did not apply retroactively to Chopra's 2011 loan modification package, her HAMP application was not facially complete. Thus, Chopra failed to prove, by a preponderance of the evidence, that she applied for HAMP assistance under section 15-1508(d-5). Accordingly, the trial court did not abuse its discretion when it confirmed the judicial sale of the property.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the Lake County circuit court judgment.

¶ 46 Affirmed.